

ASSEMBLY BILL

No. 1442

Introduced by Committee on Water, Parks and Wildlife (Huffman (Chair), Fuller (Vice Chair), Arambula, Tom Berryhill, Blumenfield, Caballero, Fletcher, Bonnie Lowenthal, John A. Perez, Salas, and Yamada)

February 27, 2009

An act to amend Sections 1053, 3050, 4011, 5654, 7149.45, 8035, 8036, 8280.6, 8405.4, 12159, 12160, and 12161 of, and to add Section 859 to, the Fish and Game Code, and to amend Sections 8670.3, 8670.61.5, and 8670.67 of the Government Code, relating to natural resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1442, as introduced, Committee on Water, Parks and Wildlife. Fish and game: oil spills: wildlife rehabilitation.

(1) Existing law generally requires the Director of Finance to approve every gift or dedication to the state of personal property, or every gift to the state of real property in fee or in any lesser estate or interest, unless the Legislature specifically provides that approval is not required.

This bill would authorize the department to seek and accept grants and donations from private and public organizations and agencies for the purpose of administering the Canine (K9) Program.

(2) Existing law requires each person who takes birds or mammals in California to apply for, and be granted, a hunting license and requires any person who applies for a hunting license to meet specified requirements.

This bill would authorize the department to issue collectible, commemorative licenses to any person for purposes of promoting and supporting licensed hunting and resource conservation.

(3) Existing law allows specified state and federal officials to take certain mammals involved in dangerous disease outbreaks.

This bill would additionally authorize county officials to take mammals pursuant to that provision upon the approval of, and in a manner approved by, the Director of Fish and Game, or his or her designee.

(4) Under existing law, it is unlawful for any person to fish with two rods without first obtaining a second-rod sport fishing validation, in addition to a valid California sport fishing license validation, and having that validation affixed to his or her valid sport fishing license. Any person who has a second-rod validation may fish with two rods in inland waters in any sport fishery in which the regulations of the commission provide for the taking of fish by angling, except those waters in which only artificial lures or barbless hooks may be used.

This bill would exclude the waters of the Smith River in Del Norte County from inland waters in which two rods can be used.

(5) Existing law exempts a licensed fish importer from the requirement to obtain a fish wholesaler's license.

This bill would revise that provision to exempt from that requirement a licensed fish importer who only purchases or obtains fish from out of state.

(6) Existing law requires the department to charge a specified fee for a Dungeness crab vessel permit or permit transfer. Existing law provides that those provisions shall become inoperative on April 1, 2010, and, as of January 1, 2011, are repealed.

This bill would extend the operation of those provisions until April 1, 2012, and would repeal those provisions on January 1, 2013.

(7) Existing law governs the sea cucumber fishery in this state. Under existing law, sea cucumbers cannot be taken, possessed aboard a boat, or landed by a person for commercial purposes except under a valid sea cucumber permit issued by the department. The Fish and Game Commission is authorized to adopt regulations that it determines may reasonably be necessary to protect the sea cucumber resource and assure a sustainable sea cucumber fishery or to enhance enforcement activities. A violation of existing law or regulations adopted pursuant thereto is a crime. Existing law provides that those provisions shall become inoperative on April 1, 2010, and, as of January 1, 2011, are repealed.

This bill would extend the operation of those provisions until April 1, 2010, and would repeal those provisions on January 1, 2011. Because this bill would extend the operation of the sea cucumber permit program and the regulations and thereby the crimes imposed for a violation of those provisions, the bill would create a state-mandated local program by creating new crimes.

(8) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. The act requires responsible parties, as defined, to fully mitigate adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. Full mitigation is required to be provided by successfully carrying out environmental projects or funding restoration activities required by the administrator in carrying out projects. The act authorizes the administrator, if any significant wildlife rehabilitation is necessary, to require the responsible party to prepare and submit a wildlife rehabilitation plan.

This bill would revise that wildlife rehabilitation plan provision to authorize the administrator to require the responsible party to prepare and submit to the administrator, and to implement, a wildlife rehabilitation plan.

(9) The act defines “nonpersistent oil” to means a petroleum-based oil, such as gasoline, diesel, or jet fuel, that has specified characteristics.

This bill would exclude diesel from that definition.

(10) Existing law requires the department to seize all birds, mammals, fish, reptiles, or amphibians, or any part thereof, that have been unlawfully taken, possessed, sold, imported, or transported.

This bill would revise that provision to also include plants and aquaculture animals and products, or any part thereof. The bill would make certain conforming changes to related provisions of existing law.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 859 is added to the Fish and Game Code, to read:

859. Notwithstanding Section 11005 of the Government Code, the department may seek and accept grants and donations from private and public organizations and agencies for the purpose of administering the Canine (K9) Program. The acceptance of one-time donations valued over \$15,000 shall require approval of the Department of Finance.

SEC. 2. Section 1053 of the Fish and Game Code is amended to read:

1053. ~~No~~A person shall *not* obtain more than one license, permit, reservation, or other entitlement of the same class, or more than the number of tags authorized by statute or regulation for the same license year, except under one of the following conditions:

(a) Licenses issued pursuant to *paragraphs (4) and (5) of subdivision (a) of Section 3031, subdivision (d) of Section 3050, paragraphs (3), (4), and (5) of subdivision (a) of Section 7149, and paragraphs (3), (4), and (5) of subdivision (a) of Section 7149.05; and paragraphs (4) and (5) of subdivision (a) of Section 3031.*

(b) The loss or destruction of an unexpired license, tag, permit, reservation, or other entitlement as certified by the applicant's signed affidavit and proof, as determined by the department, that the original license, tag, permit, reservation, or other entitlement was issued, and payment of a base fee of five dollars (\$5), adjusted pursuant to Section 713, not to exceed the fee for the original entitlement.

(c) The adjustment of the base fee pursuant to Section 713 applies to the hunting license years commencing on or after July 1, 1996, and the fishing license years commencing on or after January 1, 1996.

SEC. 3. Section 3050 of the Fish and Game Code is amended to read:

3050. (a) ~~No~~A hunting license ~~may~~ *shall not* be issued to any person unless he or she presents to the person authorized to issue that license any of the following:

(1) Evidence that he or she has held a hunting license issued by this state in a prior year.

1 (2) Evidence that he or she holds a current hunting license, or
2 a hunting license issued in either of the two previous hunting years
3 by another state or province.

4 (3) A certificate of completion of a course in hunter education,
5 principles of conservation, and sportsmanship, as provided in this
6 article. A hunter education instruction validation stamp shall be
7 permanently affixed to certificates of completion that have been
8 issued before January 1, 2008.

9 (4) A certificate of successful completion of a hunter education
10 course in another state or province.

11 (5) Evidence of completion of a course in hunter education,
12 principles of conservation, and sportsmanship, which the
13 commission may, by regulation, require.

14 (b) The evidence required in subdivision (a) shall be forwarded
15 to the department with the license agent's report of hunting license
16 sales as required pursuant to Section 1055.5.

17 (c) Subdivision (a) does not apply to any person purchasing a
18 hunting license under paragraph (5) of subdivision (a) of Section
19 3031. However, that license shall not qualify as evidence required
20 in subdivision (a) of this section.

21 *(d) The department may issue collectible, commemorative*
22 *licenses to any person for purposes of promoting and supporting*
23 *licensed hunting and resource conservation, subject to all of the*
24 *following:*

25 *(1) A commemorative license may be designed and produced*
26 *in the same image and manner of a valid hunting license, and shall*
27 *be clearly marked and identified as a commemorative license,*
28 *rendering it invalid for the take of any mammal or bird.*

29 *(2) If a commemorative license is designed and produced in*
30 *accordance with paragraph (1), that commemorative license may*
31 *be obtained only after the expiration of the valid hunting license.*

32 *(3) A commemorative license shall not confer any rights,*
33 *privileges, or other entitlements to any person purchasing or in*
34 *possession of such a license.*

35 *(4) Section 3031, subdivision (a) of this section, and subdivision*
36 *(a) of Section 1052 do not apply to any person purchasing a*
37 *commemorative license.*

38 *(5) A commemorative license shall not qualify as evidence*
39 *required in subdivision (a).*

1 SEC. 4. Section 4011 of the Fish and Game Code is amended
2 to read:

3 4011. (a) Fur-bearing mammals, game mammals, and nongame
4 mammals, when involved in dangerous disease outbreaks, may be
5 taken by duly constituted ~~federal officers of the United States~~
6 ~~Departments of Agriculture, Interior, and Public Health~~ and state
7 ~~officers of the California Departments of Food and Agriculture,~~
8 ~~Health Services, and Fish and Game.~~ *officials of any of the*
9 *following:*

- 10 (1) *The United States Department of Agriculture.*
11 (2) *The United States Department of the Interior.*
12 (3) *The United States Department of Health and Human*
13 *Services.*
14 (4) *The Department of Food and Agriculture.*
15 (5) *The State Department of Public Health.*
16 (6) *The department.*

17 (b) *A county official may take fur-bearing mammals, game*
18 *mammals, and nongame mammals pursuant to this section, upon*
19 *the prior approval of the director or his or her designee and in a*
20 *manner approved by the director or his or her designee.*

21 SEC. 5. Section 5654 of the Fish and Game Code is amended
22 to read:

23 5654. (a) (1) Notwithstanding Section 7715 and except as
24 provided in paragraph (2), the director, within 24 hours of
25 notification of a spill or discharge, as those terms are defined in
26 subdivision ~~(aa)~~ (ad) of Section 8670.3 of the Government Code,
27 where any fishing, including all commercial, recreational, and
28 nonlicensed subsistence fishing, may take place, or where
29 aquaculture operations are taking place, shall close to the take of
30 all fish and shellfish all waters in the vicinity of the spill or
31 discharge or where the spilled or discharged material has spread,
32 or is likely to spread. In determining where a spill or discharge is
33 likely to spread, the director shall consult with the Administrator
34 of the Office of Spill Prevention and Response. At the time of
35 closure, the department shall make all reasonable efforts to notify
36 the public of the closure, including notification to commercial and
37 recreational fishing organizations, and posting of warnings on
38 public piers and other locations where subsistence fishing is known
39 to occur. The department shall coordinate, when possible, with

1 local and regional agencies and organizations to expedite public
2 notification.

3 (2) Closure pursuant to paragraph (1) is not required if, within
4 24 hours of notification of a spill or discharge, the Office of
5 Environmental Health Hazard Assessment finds that a public health
6 threat does not or is unlikely to exist.

7 (b) Within 48 hours of notification of a spill or discharge subject
8 to subdivision (a), the director, in consultation with the Office of
9 Environmental Health Hazard Assessment, shall make an
10 assessment and determine all of the following:

11 (1) The danger posed to the public from fishing in the area where
12 the spill or discharge occurred or spread, and the danger of
13 consuming fish taken in the area where the spill or discharge
14 occurred or spread.

15 (2) Whether the areas closed for the take of fish or shellfish
16 should be expanded to prevent any potential take or consumption
17 of any fish or shellfish that may have been contaminated by the
18 spill or discharge.

19 (3) The likely period for maintaining a closure on the take of
20 fish and shellfish in order to prevent any possible contaminated
21 fish or shellfish from being taken or consumed or other threats to
22 human health.

23 (c) Within 48 hours after receiving notification of a spill or
24 discharge subject to subdivision (a), or as soon as is feasible, the
25 director, in consultation with the Office of Environmental Health
26 Hazard Assessment, shall assess and determine the potential danger
27 from consuming fish that have been contained in a recirculating
28 seawater tank onboard a vessel that may become contaminated by
29 the vessel's movement through an area where the spill or discharge
30 occurred or spread.

31 (d) If the director finds in his or her assessment pursuant to
32 subdivision (b) that there is no significant risk to the public or to
33 the fisheries, the director may immediately reopen the closed area
34 and waive the testing requirements of subdivisions (e) and (f).

35 (e) Except under the conditions specified in subdivision (d),
36 after complying with subdivisions (a) and (b), the director, in
37 consultation with the Office of Environmental Health Hazard
38 Assessment, but in no event more than seven days from the
39 notification of the spill or discharge, shall order expedited tests of
40 fish and shellfish that would have been open for take for

1 commercial, recreational, or subsistence purposes in the closed
2 area if not for the closure, to determine the levels of contamination,
3 if any, and whether the fish or shellfish is safe for human
4 consumption.

5 (f) (1) Within 24 hours of receiving a notification from the
6 Office of Environmental Health Hazard Assessment that no threat
7 to human health exists from the spill or discharge or that no
8 contaminant from the spill or discharge is present that could
9 contaminate fish or shellfish, the director shall reopen the areas
10 closed pursuant to this section. The director may maintain a closure
11 in any remaining portion of the closed area where the Office of
12 Environmental Health Hazard Assessment finds contamination
13 from the spill or discharge persists that may adversely affect human
14 health.

15 (2) The director, in consultation with the commission, may also
16 maintain a closure in any remaining portion of the closed area
17 where commercial fishing or aquaculture occurs and where the
18 department determines, pursuant to this paragraph, that
19 contamination from the spill or discharge persists that may cause
20 the waste of commercial fish or shellfish as regulated by Section
21 7701.

22 (g) To the extent feasible, the director shall consult with
23 representatives of commercial and recreational fishing associations
24 and subsistence fishing communities regarding the extent and
25 duration of a closure, testing protocols, and findings. If a spill or
26 discharge occurs within the lands governed by a Native American
27 tribe or affects waters flowing through tribal lands, or tribal
28 fisheries, the director shall consult with the affected tribal
29 governments.

30 (h) The director shall seek full reimbursement from the
31 responsible party or parties for the spill or discharge for all
32 reasonable costs incurred by the department in carrying out this
33 section, including, but not limited to, all testing.

34 SEC. 6. Section 7149.45 of the Fish and Game Code is
35 amended to read:

36 7149.45. (a) It is unlawful for any person to fish with two rods
37 without first obtaining a second-rod sport fishing validation, in
38 addition to a valid California sport fishing license validation, and
39 having that validation affixed to his or her valid sport fishing
40 license. Any person who has a valid second-rod sport fishing

validation affixed to his or her valid sport fishing license may fish with two rods in inland waters in any sport fishery in which the regulations of the commission provide for the taking of fish by angling, except those waters in which only artificial lures or barbless hooks may be used *and the waters of the Smith River in Del Norte County*.

(b) The department or an authorized license agent shall issue a second-rod sport fishing validation upon payment of a base fee of seven dollars and fifty cents (\$7.50) during the 1995 calendar year and subsequent years, as adjusted under Section 713.

(c) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

SEC. 7. Section 8035 of the Fish and Game Code is amended to read:

8035. (a) Except for a person exempt under Section 8030 ~~or an importer licensed under Section 8036~~, any person who, for the purpose of resale to other than the ultimate consumer, purchases or obtains fish from another person, who is required to be licensed as a fish receiver, fish processor, fish importer, or fish wholesaler under this article, shall obtain a fish wholesaler's license.

(b) The annual fee for a fish wholesaler's license is three hundred seventy-one dollars (\$371).

(c) This section does not apply to *either of the following*: ~~persons~~

(1) *Persons* required to have a marine aquaria receiver's license pursuant to Section 8033.1.

(2) *Persons licensed pursuant to Section 8036 who only purchase or obtain fish from outside this state.*

SEC. 8. Section 8036 of the Fish and Game Code is amended to read:

8036. (a) Any person who purchases or receives fish, which are taken outside of this state and brought into this state by a person who is not a licensed commercial fisherman, for the purpose of resale to other than the ultimate consumer shall obtain a fish importer's license. The annual fee for a fish importer's license is five hundred forty-nine dollars (\$549).

(b) *Any person who, for the purpose of resale to other than the ultimate consumer, purchases or obtains fish within California in addition to fish that are purchased, obtained, or taken outside of*

1 *the state, shall obtain both a wholesaler's license pursuant to*
2 *Section 8035 and an importer's license pursuant to this section.*

3 SEC. 9. Section 8280.6 of the Fish and Game Code is amended
4 to read:

5 8280.6. (a) The department shall charge a fee for each
6 Dungeness crab vessel permit of two hundred dollars (\$200) for
7 a resident of California and four hundred dollars (\$400) for a
8 nonresident of California.

9 (b) The department shall charge a nonrefundable fee of two
10 hundred dollars (\$200) for each transfer of a permit authorized
11 pursuant to paragraph (2), (4), or (5) of subdivision (a) of Section
12 8280.3.

13 (c) This section shall become inoperative on April 1, ~~2010~~ 2012,
14 and, as of January 1, ~~2011~~ 2013, is repealed, unless a later enacted
15 statute that is enacted before January 1, ~~2011~~ 2013, deletes or
16 extends the dates on which it becomes inoperative and is repealed.

17 SEC. 10. Section 8405.4 of the Fish and Game Code is
18 amended to read:

19 8405.4. This article shall become inoperative on April 1, ~~2010~~
20 2015, and as of January 1, ~~2011~~ 2016, is repealed, unless a later
21 enacted statute that is enacted before January 1, ~~2011~~ 2016, deletes
22 or extends the dates on which it becomes inoperative and is
23 repealed.

24 SEC. 11. Section 12159 of the Fish and Game Code is amended
25 to read:

26 12159. All birds, mammals, fish, reptiles, ~~or amphibians~~
27 *aquaculture animals and products, plants, or amphibians*, or any
28 part thereof, which have been taken, possessed, sold, imported, or
29 transported contrary to any of the laws of this state shall be seized
30 by the department, and, in accordance with the commission's
31 regulations, notice of seizure shall be given to the person who had
32 possession of the birds, mammals, fish, reptiles, ~~or amphibians~~
33 *aquaculture animals and products, plants, or amphibians*, or any
34 part thereof, at the time of the seizure if that person is known.

35 SEC. 12. Section 12160 of the Fish and Game Code is amended
36 to read:

37 12160. All birds, mammals, fish, reptiles, ~~or amphibians~~
38 *aquaculture animals and products, plants, or amphibians*, or any
39 part thereof, seized in accordance with Section 12159, the sale of
40 which is not prohibited and which have a current market value of

1 one hundred dollars (\$100) or more, shall be packed, preserved,
2 sold for bait, used for fish food in state-owned fish hatcheries, or
3 otherwise put to economical use immediately upon seizure, at the
4 prevailing market price for legal birds, mammals, fish, reptiles, ~~or~~
5 ~~amphibia~~ *aquaculture animals and products, plants, or amphibians*
6 in effect on the date of seizure. Any proceeds thereof shall be
7 placed in the Fish and Game Preservation fund. If the person from
8 whom such birds, mammals, fish, reptiles, ~~or~~ ~~amphibia~~ *aquaculture*
9 *animals and products, plants, or amphibians* were seized is not
10 convicted in a court of competent jurisdiction for the offense out
11 of which the seizure arose, then and in that event the proceeds
12 shall be returned to ~~such~~ *that* person.

13 SEC. 13. Section 12161 of the Fish and Game Code is amended
14 to read:

15 12161. The judge before whom any person is tried for taking,
16 possessing, selling, importing, or transporting birds, mammals,
17 fish, reptiles, ~~or~~ ~~amphibia~~ *aquaculture animals and products,*
18 *plants, or amphibians* or parts thereof contrary to the laws of this
19 state shall upon the conviction of the accused make an order
20 forfeiting and disposing of the birds, mammals, fish, reptiles, ~~or~~
21 ~~amphibia~~ *aquaculture animals and products, plants, or amphibians,*
22 or parts thereof, in accordance with the provisions of Section
23 12160. However, if the birds, mammals, fish, reptiles, ~~or~~ ~~amphibia~~
24 *aquaculture animals and products, plants, or amphibians,* or parts
25 thereof may not be sold lawfully or have a current market value
26 of less than one hundred dollars (\$100), the judge may at his
27 discretion order that they be donated to a state, county, city, or any
28 charitable institution, or that they be destroyed.

29 SEC. 14. Section 8670.3 of the Government Code is amended
30 to read:

31 8670.3. Unless the context requires otherwise, the following
32 definitions shall govern the construction of this chapter:

33 (a) "Administrator" means the administrator for oil spill response
34 appointed by the Governor pursuant to Section 8670.4.

35 (b) (1) "Best achievable protection" means the highest level of
36 protection that can be achieved through both the use of the best
37 achievable technology and those manpower levels, training
38 procedures, and operational methods that provide the greatest
39 degree of protection achievable. The administrator's determination
40 of which measures provide the best achievable protection shall be

1 guided by the critical need to protect valuable coastal resources
2 and marine waters, while also considering all of the following:

- 3 (A) The protection provided by the measure.
- 4 (B) The technological achievability of the measure.
- 5 (C) The cost of the measure.

6 (2) The administrator shall not use a cost-benefit or
7 cost-effectiveness analysis or any particular method of analysis in
8 determining which measures provide the best achievable protection.
9 The administrator shall instead, when determining which measures
10 provide best achievable protection, give reasonable consideration
11 to the protection provided by the measures, the technological
12 achievability of the measures, and the cost of the measures when
13 establishing the requirements to provide the best achievable
14 protection for coastal and marine resources.

15 (c) (1) “Best achievable technology” means that technology
16 that provides the greatest degree of protection, taking into
17 consideration both of the following:

18 (A) Processes that are being developed, or could feasibly be
19 developed anywhere in the world, given overall reasonable
20 expenditures on research and development.

21 (B) Processes that are currently in use anywhere in the world.
22 (2) In determining what is the best achievable technology
23 pursuant to this chapter, the administrator shall consider the
24 effectiveness and engineering feasibility of the technology.

25 (d) “Dedicated response resources” means equipment and
26 personnel committed solely to oil spill response, containment, and
27 cleanup that are not used for any other activity that would adversely
28 affect the ability of that equipment and personnel to provide oil
29 spill response services in the timeframes for which the equipment
30 and personnel are rated.

31 (e) “Director” means the Director of Fish and Game.

32 (f) “Environmentally sensitive area” means an area defined
33 pursuant to the applicable area contingency plans, as created and
34 revised by the Coast Guard and the administrator.

35 (g) “Inland spill” means a release of at least one barrel (42
36 gallons) of oil into inland waters that is not authorized by any
37 federal, state, or local governmental entity.

38 (h) “Inland waters” means waters of the state other than marine
39 waters, but not including groundwater.

(i) “Local government” means a chartered or general law city, a chartered or general law county, or a city and county.

(j) (1) “Marine facility” means any facility of any kind, other than a tank ship or tank barge, that is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility is either of the following:

(A) Subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(B) Placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank.

(2) For the purposes of this chapter, “marine facility” includes a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(3) For the purposes of this chapter, “marine facility” does not include a small craft refueling dock.

(k) (1) “Marine terminal” means any marine facility used for transferring oil to or from a tank ship or tank barge.

(2) “Marine terminal” includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (m) of Section 25270.2 of the Health and Safety Code.

(l) “Marine waters” means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

(m) “Mobile transfer unit” means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(n) “Nondedicated response resources” means those response resources identified by an Oil Spill Response Organization for oil spill response activities that are not dedicated response resources.

(o) “Nonpersistent oil” means a petroleum-based oil, such as gasoline, ~~diesel~~, or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

1 (p) “Nontank vessel” means a vessel of 300 gross tons or greater
2 that carries oil, but does not carry that oil as cargo.

3 (q) “Oil” means any kind of petroleum, liquid hydrocarbons,
4 or petroleum products or any fraction or residues therefrom,
5 including, but not limited to, crude oil, bunker fuel, gasoline, diesel
6 fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and
7 liquid distillates from unprocessed natural gas.

8 (r) “Oil spill cleanup agent” means a chemical, or any other
9 substance, used for removing, dispersing, or otherwise cleaning
10 up oil or any residual products of petroleum in, or on, any of the
11 waters of the state.

12 (s) “Oil spill contingency plan” or “contingency plan” means
13 the oil spill contingency plan required pursuant to Article 5
14 (commencing with Section 8670.28).

15 (t) (1) “Oil Spill Response Organization” or “OSRO” means
16 an individual, organization, association, cooperative, or other entity
17 that provides, or intends to provide, equipment, personnel, supplies,
18 or other services directly related to oil spill containment, cleanup,
19 or removal activities.

20 (2) A “rated OSRO” means an OSRO that has received a
21 satisfactory rating from the administrator for a particular rating
22 level established pursuant to Section 8670.30.

23 (3) “OSRO” does not include an owner or operator with an oil
24 spill contingency plan approved by the administrator or an entity
25 that only provides spill management services, or who provides
26 services or equipment that are only ancillary to containment,
27 cleanup, or removal activities.

28 (u) “Onshore facility” means a facility of any kind that is located
29 entirely on lands not covered by marine waters.

30 (v) (1) “Owner” or “operator” means any of the following:

31 (A) In the case of a vessel, a person who owns, has an ownership
32 interest in, operates, charters by demise, or leases, the vessel.

33 (B) In the case of a marine facility, a person who owns, has an
34 ownership interest in, or operates the marine facility.

35 (C) Except as provided in subparagraph (D), in the case of a
36 vessel or marine facility, where title or control was conveyed due
37 to bankruptcy, foreclosure, tax delinquency, abandonment, or
38 similar means to an entity of state or local government, a person
39 who owned, held an ownership interest in, operated, or otherwise

1 controlled activities concerning the vessel or marine facility
2 immediately beforehand.

3 (D) An entity of the state or local government that acquired
4 ownership or control of a vessel or marine facility, when the entity
5 of the state or local government has caused or contributed to a spill
6 or discharge of oil into marine waters.

7 (2) “Owner” or “operator” does not include a person who,
8 without participating in the management of a vessel or marine
9 facility, holds indicia of ownership primarily to protect the person’s
10 security interest in the vessel or marine facility.

11 (3) “Operator” does not include a person who owns the land
12 underlying a marine facility or the facility itself if the person is
13 not involved in the operations of the facility.

14 (w) “Person” means an individual, trust, firm, joint stock
15 company, or corporation, including, but not limited to, a
16 government corporation, partnership, and association. “Person”
17 also includes a city, county, city and county, district, and the state
18 or any department or agency thereof, and the federal government,
19 or any department or agency thereof, to the extent permitted by
20 law.

21 (x) “Pipeline” means a pipeline used at any time to transport
22 oil.

23 (y) “Reasonable worst case spill” means, for the purposes of
24 preparing contingency plans for a nontank vessel, the total volume
25 of the largest fuel tank on the nontank vessel.

26 (z) “Responsible party” or “party responsible” means any of
27 the following:

28 (1) The owner or transporter of oil or a person or entity accepting
29 responsibility for the oil.

30 (2) The owner, operator, or lessee of, or a person that charters
31 by demise, a vessel or marine facility, or a person or entity
32 accepting responsibility for the vessel or marine facility.

33 (aa) “Small craft” means a vessel, other than a tank ship or tank
34 barge, that is less than 20 meters in length.

35 (ab) “Small craft refueling dock” means a waterside operation
36 that dispenses only nonpersistent oil in bulk and small amounts of
37 persistent lubrication oil in containers primarily to small craft and
38 meets both of the following criteria:

39 (1) Has tank storage capacity not exceeding 20,000 gallons in
40 any single storage tank or tank compartment.

(2) Has total usable tank storage capacity not exceeding 75,000 gallons.

(ac) “Small marine fueling facility” means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:

(A) Has tank storage capacity greater than 20,000 gallons but not more than 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(ad) “Spill” or “discharge” means a release of at least one barrel (42 gallons) of oil into marine waters that is not authorized by a federal, state, or local government entity.

(ae) “State Interagency Oil Spill Committee” means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(af) “California oil spill contingency plan” means the California oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(ag) “Tank barge” means a vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(ah) “Tank ship” means a self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(ai) “Tank vessel” means a tank ship or tank barge.

(aj) “Vessel” means a watercraft or ship of any kind, including every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(ak) “Vessel carrying oil as secondary cargo” means a vessel that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

1 SEC. 15. Section 8670.61.5 of the Government Code is
2 amended to read:

3 8670.61.5. (a) For purposes of this chapter, “wildlife
4 rehabilitation” means those actions that are necessary to fully
5 mitigate for the damage caused to wildlife, fisheries, wildlife
6 habitat, and fisheries habitat, including beaches, from a spill or
7 inland spill.

8 (b) Responsible parties shall fully mitigate adverse impacts to
9 wildlife, fisheries, wildlife habitat, and fisheries habitat. Full
10 mitigation shall be provided by successfully carrying out
11 environmental projects or funding restoration activities required
12 by the administrator in carrying out projects complying with the
13 requirements of this section. Responsible parties are also liable
14 for the costs incurred by the administrator or other government
15 agencies in carrying out this section.

16 (c) If any significant wildlife rehabilitation is necessary, the
17 administrator may require the responsible party to prepare and
18 submit *to the administrator, and to implement*, a wildlife
19 rehabilitation plan ~~to the administrator~~. The plan shall describe the
20 actions that will be implemented to fully meet the requirements
21 of subdivision (b), describe contingency measures that will be
22 carried out in the event that any of the plan actions are not fully
23 successful, provide a reasonable implementation schedule, describe
24 the monitoring and compliance program, and provide a financing
25 plan. The administrator shall review and determine whether to
26 approve the plan within 60 days of submittal. Before approving a
27 plan, the administrator shall first find that the implementation of
28 the plan will fully mitigate the adverse impacts to wildlife,
29 fisheries, wildlife habitat, and fisheries habitat. If the habitat
30 contains beaches that are or were used for recreational purposes,
31 the Department of Parks and Recreation shall review the plan and
32 provide comments to the administrator.

33 (d) The plan shall place first priority on avoiding and minimizing
34 any adverse impacts. For impacts that do occur, the plan shall
35 provide for full onsite restoration of the damaged resource to the
36 extent feasible. To the extent that full onsite restoration is not
37 feasible, the plan shall provide for offsite in-kind mitigation to the
38 extent feasible. To the extent that adverse impacts still have not
39 been fully mitigated, the plan shall provide for the enhancement
40 of other similar resources to the extent necessary to meet the

1 requirements of subdivision (b). In evaluating whether a wildlife
2 rehabilitation plan is adequate, the administrator may use the
3 habitat evaluation procedures established by the United States Fish
4 and Wildlife Service or any other reasonable methods as
5 determined by the Director of Fish and Game.

6 (e) The administrator shall prepare regulations to implement
7 this section. The regulations shall include deadlines for the
8 submittal of plans. In establishing the deadlines, the administrator
9 shall consider circumstances such as the size of the spill and the
10 time needed to assess damage and mitigation.

11 SEC. 16. Section 8670.67 of the Government Code is amended
12 to read:

13 8670.67. (a) Any person who intentionally or negligently does
14 any of the following acts shall be subject to an administrative civil
15 penalty for a spill not to exceed two hundred thousand dollars
16 (\$200,000), or for an inland spill not to exceed fifty thousand
17 dollars (\$50,000), for each violation as imposed by the
18 administrator pursuant to Section 8670.68, and each day or partial
19 day that a violation occurs is a separate violation:

20 (1) Except as provided in Section 8670.27, fails to follow the
21 applicable contingency plans or the direction or orders of the
22 administrator in connection with ~~an oil~~ *a spill or inland spill*.

23 (2) Fails to notify the Coast Guard that a vessel is disabled
24 within one hour of the disability and the vessel, while disabled,
25 causes a discharge that enters marine waters or inland waters. For
26 the purposes of this paragraph, “vessel” means a vessel, as defined
27 in Section 21 of the Harbors and Navigation Code, of 300 gross
28 registered tons or more.

29 (3) Is responsible for a spill or inland spill, unless the discharge
30 is authorized by the United States, the state, or other agency with
31 appropriate jurisdiction.

32 (4) Fails to begin cleanup, abatement, or removal of spilled oil
33 as required by Section 8670.25.

34 (b) Except as provided in subdivision (a), any person who
35 intentionally or negligently violates any provision of this chapter,
36 or Division 7.8 (commencing with Section 8750) of the Public
37 Resources Code, or any permit, rule, regulation, standard, cease
38 and desist order, or requirement issued or adopted pursuant to
39 those provisions, shall be liable for an administrative civil penalty
40 as imposed by the administrator pursuant to Section 8670.68, not

1 to exceed one hundred thousand dollars (\$100,000) for each
2 violation of a separate provision, or, for continuing violations, for
3 each day that violation continues.

4 (c) No person shall be liable for a civil penalty imposed under
5 this section and for a civil penalty imposed pursuant to Section
6 8670.66 for the same act or failure to act.

7 SEC. 17. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.